CHANGES WITHOUT REGULATORY EFFECT UNDER
CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Title 18. Public Revenues

Regulations 1525.2, *Manufacturing Equipment*, and
1525.3, *Manufacturing Equipment - Leases of Tangible Personal Property*

A. Factual Basis

The State Board of Equalization (Board) adopted California Code of Regulations, title 18, sections (Regulations) 1525.2, *Manufacturing Equipment*, and 1525.3, *Manufacturing Equipment - Leases of Tangible Personal Property*, to implement, interpret, and make specific the provisions of Revenue and Taxation Code section 6377, which provided a partial exemption from sales and use tax for certain property purchased by a qualified person to be used primarily in specified activities, including manufacturing. Section 6377 was added to the Revenue and Taxation Code by Statutes 1993, chapter 881 (Sen. Bill No. 671), section 1 and last amended by Statutes 1996, chapter 954 (Sen. Bill No. 38), section 6 before section 6377 was repealed by its own terms, effective January 1, 2004.[1] Therefore, there has not been any statutory authority for the partial exemption implemented, interpreted, and made specific by Regulations 1525.2 and 1525.3 since January 1, 2004. And, as a result, the Board proposes to repeal Regulations 1525.2 and 1525.3 under California Code of Regulations, title 1, section (Rule) 100 and thereby delete the regulations, including appendices A and B to Regulation 1525.2, from the California Code of Regulations. The proposed deletion of Regulations 1525.2 and 1525.3 from the California Code of Regulations is appropriate for processing under Rule 100 because Rule 100, subdivision (a)(2), specifically provides that deleting a regulatory provision for which all statutory authority has been repealed is a change without regulatory effect.

B. Proposed Changes

The following Rule 100 changes are proposed to repeal Regulations 1525.2 and 1525.3, including appendices A and B to Regulation 1525.2, and thereby delete the regulations from the California Code of Regulations:

---

[1] Section 6377, subdivision (g)(2)(A) provided that the "section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994." This contingency was met on January 1, 2003, and the section was therefore repealed on the subsequent January 1, which was January 1, 2004.

TEXT OF PROPOSED CHANGES

~~**Regulation 1525.2. Manufacturing Equipment.**~~

~~(a) Partial Exemption for Property Purchased for Use in the Manufacturing Process. Section 6377 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for certain properties described in this regulation.~~

~~For the period commencing on January 1, 1994, and ending on December 31, 1994, the partial exemption applies to the taxes imposed by the state (6%), but does not apply to the taxes imposed by counties, cities, and districts pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code § 7200, et seq.) or the Transactions and Use Tax Law (Rev. & Tax. Code §§ 7251, et seq.).~~

~~For the period commencing on January 1, 1995, and ending on December 31, 2000, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.~~

~~For the period commencing on January 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.~~

~~For the period commencing on January 1, 2002, and ending on December 31, 2003, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.~~

~~Pursuant to the provisions of the Revenue and Taxation Code section 6377(g), the partial exemption from tax on the sale and use of property used in manufacturing and related activities as described in this regulation expired on December 31, 2003.~~

~~Subject to the limitations set forth above, this partial exemption applies to gross receipts from the sale, storage, use, or other consumption in this state of the following items:~~

> ~~(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point that raw materials are received by the qualified person and introduced into the process and ending at the point at which the property has been altered to its completed form, including packaging, if required. For purposes of this regulation:~~

~~(A) Raw materials will be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing activities are conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing activities are conducted, however, will not be considered to have been introduced into the process for purposes of this regulation.~~

~~(B) For purposes of this regulation, the term "packaging" includes only that packaging necessary to prepare the goods for delivery to and placement in the qualified person's finished goods inventory, or to prepare the goods so that they are suitable for delivery to and placement in finished goods inventory. Any additional packaging, such as that packaging necessary to consolidate the goods prior to shipping or to protect them during transportation, shall not be considered to be "packaging" for purposes of this regulation.~~

~~(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development as defined in subdivision (c)(8).~~

~~(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in subdivision (a)(1) or (a)(2).~~

~~(4) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.~~

~~(b) Property Used Primarily in Administration, General Management, or Marketing. Notwithstanding any other provision of this regulation, this partial exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing. For purposes of this subdivision:~~

~~(1) Tangible personal property is used primarily in administration, general management, or marketing when it is used 50 percent or more of the time in one or more of those activities.~~

~~(2) Tangible personal property used primarily to clean and maintain the factory floor of a manufacturing facility is used primarily in a stage of the manufacturing of property and is not used primarily in administration, general management, or marketing.~~

~~(3) Fire safety equipment that is tangible personal property and that is used primarily at and in connection with the factory floor of a manufacturing facility is used primarily in a stage of the manufacturing of property and is not used primarily in administration, general management, or marketing.~~

~~(c) Definitions. For purposes of this regulation:~~

~~(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.~~

~~(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property. For purposes of this regulation, "greater functionality" means that the tangible personal property has been improved so that it can perform new or different functions than the original property. Manufacturing includes logging, that is, the felling of timber, but does not include tree farming. Manufacturing does not include crop harvesting. Provided that the activity constitutes a "sale" as that term is used in subdivision (b) of section 6006 of the Revenue and Taxation Code, the tangible personal property need not be owned by the qualified person in order for the activity to qualify as manufacturing for purposes of this regulation.~~

~~(3) "Primarily" means that the tangible personal property is used 50 percent or more of the time in the designated activity or activities.~~

~~(4) "Process" means the period beginning at the point at which any raw materials are received by the qualified person and are introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.~~

~~(5) "Processing" means the physical application of materials and labor to modify or change the characteristics of property.~~

~~(6) "Qualified person" means any person that satisfies the requirements of both subdivisions (c)(6)(A) and (c)(6)(B) below with regard to the trade or business in which the property will be placed into service in the use qualifying the property for this partial exemption:~~

~~(A) A "qualified person" must have first commenced trade or business activities in a new trade or business in this state on or after January 1, 1994. For purposes of this subdivision, the term "activities" means trade or business activities. In determining whether or not a person is qualified within the meaning of this subdivision, the following rules apply:~~

~~1. The term "trade or business activities" does not mean the mere formation or organization of a corporation or other business entity that is intended to conduct a~~

~~trade or business. Instead, a corporation or business entity first conducts activities when it first starts or commences the trade or business for which it was organized. The acquisition of operating assets that are necessary to the type of business contemplated, however, will constitute commencing activities. The term "operating assets" as used in this subdivision means assets that are in a state of readiness to be placed in service within a reasonable time period following their acquisition.~~

~~2. Notwithstanding any other provision of this subdivision, a person will not be considered to have first commenced activities in a new trade or business in this state on or after January 1, 1994, if, at any time within the 36 months preceding that date, that person, or any related person, was required to have secured a seller's permit under section 6066 of the Revenue and Taxation Code for that trade or business, or any other trade or business classified under the same division of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (the "Manual"). For purposes of this regulation, the term "division" means a division as that term is used in the Manual.~~

~~3. A trade or business is not a new trade or business in this state if, within the 36 months preceding the date that activities were first commenced in that trade or business in this state, either the person claiming the partial exemption, or any related person, had conducted any activities in this state in any trade or business classified under the same division of the Manual as that trade or business.~~

~~4. Where a person, or any related person, is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (a "prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new trade or business if the additional trade or business activity is classified under a different division of the Manual than are any of the person's (or any related person's) current or prior trade or business activities in this state within the preceding 36 months.~~

~~5. Where a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of section 23101 of the Revenue and Taxation Code) after December 31, 1993 (other than by purchase or other acquisition described in subdivision (c)(6)(A)6., the newly commenced trade or business activity in this state shall be treated as a new trade or business for purposes of this subdivision.~~

~~6. On or after January 1, 1995, notwithstanding anything else set forth in this subdivision, in any case where a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of the entity) that is doing business in this state (within the meaning of section 23101 of the Revenue and Taxation Code), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new trade or business if the aggregate fair market value of the acquired assets (including real, personal, tangible,~~

~~and intangible property) used by that person (or any related person) in the conduct of his or her trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the person (or any related person) being used in the same trade or business both within and without this state. For purposes of this subdivision only:~~

~~a. The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the month following the quarterly period in which the person (or any related person) first uses any of the acquired trade or business assets in his or her business activity.~~

~~b. Any acquired assets that constitute property described in section 1221(a)(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in section 1221(a)(1) of the Internal Revenue Code in the hands of the acquiring person (or any related person).~~

~~c. The trade or business conducted in this state by the acquiring person after the asset acquisition date shall be considered to be the same as an out-of-state trade or business conducted or previously conducted by the acquiring person (or any related person) only if the trade or business activities of both companies are or would be classified in the same division of the Manual.~~

~~d. An acquired trade or business will not be considered to have been acquired as an existing trade or business for purposes of this subdivision if it is acquired either: (1) from a liquidation sale of assets pursuant to a bankruptcy filed under Chapter 7 of the United States Bankruptcy Code; or (2) pursuant to a creditor's execution or foreclosure sale of a secured interest in the assets of the trade or business.~~

~~e. Example No. 1: Corporation X is doing business wholly outside of this state in the trade or business of manufacturing automobiles. The total fair market value of the total assets of this trade or business is $100,000,000. Then, on or after January 1, 1994, Corporation X acquires all of the assets of an automobile manufacturing business in this state with a fair market value of $5,000,000 and immediately uses the acquired assets in its automobile manufacturing trade or business. Thereafter, between the date of acquisition and the last day of the month following the quarterly period during which the acquisition occurred, Corporation X acquires another $1,000,000 in assets for use in the automobile manufacturing business in this state. Under these assumed facts, the conditions set forth in this subparagraph will not serve to disqualify Corporation X from the partial exemption since the fair market value of the acquired assets does not exceed 20 percent ($5,000,000/$106,000,000) of the aggregate fair market value of the total assets of the trade or business being conducted by Corporation X; and neither Corporation X nor any related person had conducted any trade or business activities in this state within the preceding 36 months.~~

~~f. Example No. 2: Assume the same facts as in Example No. 1 above, but in this case, prior to acquiring the assets of the automobile manufacturing business in this state, Corporation X was solely and exclusively in the trade or business of providing data processing services. After the acquisition of the assets by Corporation X, however, the acquired assets will continue to be used in the automobile manufacturing business in this state. Assume further that no additional purchases are made after the date of acquisition. Under these assumed facts, since data processing services and automobile manufacturing are classified in different divisions of the Manual, the partial exemption will not be available to Corporation X because the fair market value of the acquired assets exceeds 20 percent ($5,000,000/$5,000,000) of the aggregate fair market value of the total assets held by Corporation X in the same trade or business.~~

~~7. In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the person as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business. For purposes of this subdivision only:~~

~~a. Example No. 1: Corporation X is doing business in this state. One of its trade or business activities in this state is manufacturing automobiles. After January 1, 1994, for consideration, Corporation X transfers all of the assets used in the trade or business of manufacturing automobiles to a newly-formed, wholly-owned subsidiary known as Corporation Y. For purposes of applying this regulation, this transaction shall be treated as an acquisition of an existing trade or business by Corporation Y.~~

~~b. Example No. 2: Partnership A is a manufacturer doing business in this state. After January 1, 1994, for consideration, Partnership A transfers all of its assets to a newly-formed corporation known as Corporation B. Corporation B is owned by the partners of Partnership A in the same proportionate ownership interests as their respective ownership interests in the partnership. For purposes of applying this regulation, this transaction shall be treated as an acquisition of an existing trade or business by Corporation B.~~

~~8. For purposes of this subdivision, a person is a "related person" if that person is or previously was related to the qualified person within the meaning of either section 267 or 318 of the Internal Revenue Code.~~

~~9. The term "acquire" shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.~~

~~(B) A qualified person must be engaged in those manufacturing lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition. For purposes of this subdivision:~~

~~1. For purposes of classifying a line or lines of business, the economic unit shall be the “establishment” and the classification of the line or lines of business will be based on the establishment's single most predominant activity based upon value of production. The term “establishment” means an economic unit, generally at a single physical location, where business is conducted or where services or manufacturing or other industrial operations are performed. The following will generally constitute an “establishment”: a factory, mill, store, hotel, movie theater, mine, farm, ranch, bank, railroad depot, airline terminal, sales office, warehouse, or central administrative office.~~

~~2. For purposes of determining the “establishment” or “establishments” of a trade or business:~~

~~a. Where distinct and separate economic activities are performed at a single physical location, such as construction activities operated out of the same physical location as a lumber yard, each activity should be treated as a separate establishment where: (i) no one industry description in the classification includes such combined activities; (ii) the employment in each such economic activity is significant; and (iii) separate reports are prepared on the number of employees, their wages and salaries, sales or receipts, property and equipment, and other types of financial data, such as financial statements, job costing, and profit center accounting. For purposes of this paragraph, whether or not employment in an economic activity is significant shall be based upon all of the facts and circumstances. Nevertheless, employment in an economic activity will be considered to be “significant” for purposes of this paragraph whenever more than 25 percent of the taxpayer's total number of employees at a single physical location, or more than 25 percent of the taxpayer's total dollar value of payroll at a single physical location, is attributable to the economic activity being tested for separate establishment status.~~

~~b. An establishment is not necessarily identical with the enterprise or company which may consist of one or more establishments. Also, an establishment is to be distinguished from subunits of the establishment such as departments.~~

~~c. Where a person conducts business at more than one establishment within the meaning of this subdivision, then that person shall be considered to be a “qualified person” for purposes of this regulation only as to those purchases that are intended to be used and are actually used in those lines of business that are described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(7) “Refining” means the process of converting a natural resource to an intermediate or finished product.~~

~~(8) “Research and development” means those activities that are described in section 174 of the Internal Revenue Code or in any regulations thereunder.~~

~~(9) “Tangible personal property” does not include any of the following:~~

~~(A) Real property, including tangible personal property to be incorporated into an improvement to real property, except for “special purpose buildings and foundations” as defined in subdivision (c)(10)(D) and conveyance systems and assembly lines as provided in subdivision (c)(10)(A).~~

~~(B) Consumables with a normal useful life of less than one year, except as provided in subdivision (c)(10)(E). For purposes of this regulation, it shall be presumed tangible personal property that the qualified person treats as having a normal useful life of less than one year for state income or franchise tax purposes is tangible personal property with a normal useful life of less than one year. This presumption may be rebutted by evidence satisfactory to the Board.~~

~~(C) Furniture, inventory, equipment used in the extraction process, equipment used to store raw materials that have not yet entered or commenced the manufacturing process, or equipment used to store finished products that have completed the manufacturing process. The extraction process includes such severance activities as mining, oil and gas extraction.~~

~~(D) Any property for which a credit is claimed under either section 17053.49 or 23649 of the Revenue and Taxation Code.~~

~~(10) “Tangible personal property” includes but is not limited to the following:~~

~~(A) Machinery and equipment within the meaning of subdivision (a)(6) of Regulation 1521 of the Sales and Use Tax Regulations, including component parts and contrivances such as belts, shafts, moving parts, and operating structures. The term also includes conveyance systems and assembly lines without regard to the manner of affixation to real property.~~

~~(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, including both operating programs and application programs, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party. Any repair and replacement parts that the qualified person treats as having a useful life of less than one year for state income or franchise tax purposes shall be presumed to have a useful life of less than one year for purposes of this regulation. This presumption may be rebutted by evidence satisfactory to the Board.~~

~~(C) Property used in pollution control that meets or exceed standards established by this state or any local or regional governmental agency within this state.~~

~~(D) Special purpose buildings and foundations that (i) are used as an integral part of the manufacturing, processing, refining, or fabricating process, or (ii) constitute a research facility used during the manufacturing process as an integral part of a manufacturing, processing, refining, or fabricating activity, or (iii) constitute a storage facility used during the manufacturing process as an integral part of a manufacturing, processing, refining, or fabricating activity. For purposes of this subdivision:~~

~~1. For purposes of this subdivision, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subdivision (a)(1) of this regulation (the qualified purpose).~~

~~2. A building is specifically designed and constructed or modified for a qualified purpose if it is not economic to design and construct the building for the intended purpose and then use the structure for a different purpose.~~

~~3. A building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for non-qualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. A use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualifying purpose.~~

~~4. In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subdivision.~~

~~5. Buildings and foundations that do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to, buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process.~~

~~6. For purposes of this subdivision, the term "integral part" means that the special purpose building or foundation (i) is used directly in the activity qualifying for the~~

~~partial exemption from sales and use tax and (ii) is essential to the completeness of that activity. In determining whether property is used as an integral part of manufacturing, all properties used by the qualified person in processing the raw materials into the final product are properties used as an integral part of manufacturing.~~

~~(E) Fuels used or consumed in the manufacturing process.~~

~~(F) Property used in recycling.~~

~~(11) "Standard Industrial Classification" means a Standard Industrial Classification in the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.~~

~~(d) Three-Year Limitation. Notwithstanding any other provision of this regulation, once a person has conducted business activities in a new trade or business for three or more years, that person will no longer be considered to be in a "new trade or business," nor "qualified" for this partial exemption.~~

~~(e) Taxes as to Which the Partial Exemption Does Not Apply. This partial exemption does not apply to any tax levied by a county, city, or district pursuant to, or in accordance with, either the Bradley-Burns Uniform Local Sales and Use Tax Law (Rev. & Tax. Code §§7200 et seq.) or the Transactions and Use Tax Law (Rev. & Tax Code §§7251 et seq.).~~

~~On or after January 1, 1995, this partial exemption shall not apply to any tax levied pursuant to section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to section 35 of article XIII of the California Constitution.~~

~~(f) Exemption Certificates. Except as otherwise set forth in subdivision (f)(3), to claim the partial exemption provided by this regulation, a person must be both pre-qualified by the Board and either registered to hold a seller's permit or maintain a consumer use tax account. Exemption certificates issued to qualified persons will contain a control number and expiration date for verifying a person's status as a qualified person. An exemption certificate is not valid if it has not been issued by the Board or if it is accepted after the expiration date on the certificate. Qualified persons who have been pre-qualified may reproduce the issued certificates as needed for their qualifying purchases.~~

~~The exemption certificates issued by the Board will be in substantially the same form as they appear in Appendices A and B of this regulation. Qualified persons who purchase or lease tangible personal property from an in-state retailer or an out-of-state retailer obligated to collect the use tax must provide the retailer with a manufacturer's exemption certificate in order to claim the partial exemption. The manufacturer's use tax declaration must be completed by a qualified person to claim a partial exemption from use tax on purchases of tangible personal property from an out-of-state retailer not obligated to collect the use tax.~~

~~Solely for the purposes of this regulation, it is presumed that a seller accepts a manufacturer's exemption certificate from a prequalified purchaser in good faith in the absence of evidence to the contrary. A retailer's direct knowledge that the purchaser is not purchasing tangible personal property for use in a manufacturing activity, that the purchaser intends the tangible personal property for his or her own use, or that the tangible personal property does not have a normal useful life of one year or more constitutes evidence to the contrary. A purchaser providing a manufacturer's exemption certificate accepted in good faith by the seller for tangible personal property that does not qualify for this exemption is liable for the payment of tax as set forth in subdivision (h).~~

~~(1) Manufacturer's Exemption Certificates.~~

~~(A) In General. Except as otherwise provided in subdivisions (f)(1)(B) or (f)(3) of this regulation, or in section 6902.2 of the Revenue and Taxation Code, a partial exemption from sales or use tax shall not be allowed unless:~~

~~1. The qualified person furnishes the retailer with a manufacturer's exemption certificate no later than 60 days after the date of the purchase; and~~

~~2. The retailer timely files a sales and use tax return claiming the partial exemption and, together with that timely return, provides the Board with a copy of the manufacturer's exemption certificate.~~

~~(B) Exclusions. Except as provided in subdivision (f)(1)(C) below, retailers claiming the partial exemption in timely filed returns will not be required to furnish the Board with copies of manufacturer's exemption certificates for sales or leases of tangible personal property made by a retailer at any single physical location to a single qualified purchaser that do not exceed an aggregate total of $25,000 during a single calendar quarter. Regardless of the total quarterly sales per purchaser, however, when necessary for the efficient administration of the sales and use tax law, the Board may, on 30 days' written notice, require a retailer to commence furnishing the Board with copies of all certificates on a quarterly basis pursuant to subdivision (f)(1)(A)2.~~

~~(C) Retention and Availability of Certificates. A retailer must retain each manufacturer's exemption certificate received from a qualified person for a period of four years from the date on which the retailer claims a partial exemption based on the exemption certificate.~~

~~Within 45 days of the Board's request, retailers must furnish to the Board any and all manufacturer's exemption certificates, or copies thereof, received from qualified persons, including exemption certificates for aggregate sales or leases of $25,000 or less to a single qualified person made at any single physical location of the retailer during a single calendar quarter.~~

~~(2) Manufacturer's Use Tax Declaration. Except as provided in section 6902.2 of the Revenue and Taxation Code, a partial exemption from the use tax shall not be allowed unless the qualified person:~~

~~(A) Timely files a sales and use tax return or consumer use tax return for the period in which the purchase occurs and timely pays any applicable tax in full that is excluded from this partial exemption as provided in subdivision (e) of this regulation; and~~

~~(B) Attaches a completed manufacturer's use tax declaration to the sales and use tax return or consumer use tax return that is timely filed with the Board.~~

~~(3) Refund of Partial Exemption.~~

~~(A) For the period commencing on January 1, 1994, and ending on December 31, 1994, a qualified person may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a manufacturer's exemption certificate on or before March 31, 1995. The retailer must refund the tax directly to the purchaser or, at the purchaser's sole option, the purchaser may be credited with such amount. In the event that the retailer has already reported and paid the tax to the Board, the retailer must file a written claim for refund on or before April 30, 1995.~~

~~(B) A person who paid sales tax on a qualified sale or paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for such a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the qualified property otherwise met all the requirements of a qualified person at the time of the purchase subject to the refund claimed under this part.~~

~~(4) Construction Contractors. In the case of a contractor who purchases property as an agent of a qualified person or for subsequent resale to a qualified person, the qualified person is deemed to be the purchaser for purposes of this subdivision.~~

~~(g) Conversion of Property to a Use Not Qualifying for the Partial Exemption. Notwithstanding subdivision (a), this partial exemption shall not apply to any sale of, or the storage, use, or other consumption in this state of property that, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, is: (i) removed from this state, (ii) converted from an exempt use under this regulation to some other use not qualifying for the partial exemption, or (iii) used in a manner not qualifying for the partial exemption under this regulation. For purposes of this subdivision, property is converted to a use not qualifying for the partial exemption if, without limitation, the property, or any interest in the property, or possession or control of the property, is either directly or indirectly sold, transferred, leased, or assigned to a person who is not a qualified person on the~~

~~date the property is sold, transferred, leased, or assigned to such non-qualified person. In the case of a corporation that, as a qualified person, purchases tangible personal property under this partial exemption and then, within one year from the later of the date of purchase of the property or the date that the property was first placed into service by that corporation in an exempt use, either directly or indirectly transfers that property to its parent corporation that is not a qualified person on the date of the transfer of property to the parent corporation, that property has been converted to a use not qualifying for the partial exemption.~~

~~(h) Purchaser's Liability for the Payment of Sales Tax. If a purchaser submits a copy of a manufacturer's exemption certificate to the seller, and then within one year from the later of the date of purchase of the property or the date that the property was first placed into service by the purchaser in an exempt use, the purchaser either (i) removes that property from this state, (ii) converts that property from an exempt use under this regulation to some other use not qualifying for the partial exemption, or (iii) uses that property in a manner not qualifying for the partial exemption under this regulation, then, in that event, the purchaser shall be liable for payment of sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the property at the time the property was so removed, converted, or used; and the sales price of the property to the purchaser shall be deemed to be the gross receipts from that retail sale. For purposes of this subdivision, property is converted to a use not qualifying for the partial exemption if, without limitation, the property, or any interest in the property, or possession or control of the property, is either directly or indirectly sold, transferred, leased, or assigned to a person who is not a qualified person on the date the property is sold, transferred, leased, or assigned to such nonqualified person.~~

~~(i) Leases to Qualifying Persons.~~

~~(1) Leases -In General. Subject to all the limitations and conditions set forth in this regulation and regulation 1525.3, this partial exemption may apply to rental receipts paid by a qualified person with respect to a lease of tangible personal property to the qualified person, which tangible personal property is used as set forth in subdivisions (a)(1), (a)(2), (a)(3), or (a)(4) of this regulation.~~

~~(2) Leases -Acquisition Sale and Leaseback. A person will be regarded as having paid sales tax reimbursement or use tax with respect to that person's purchase of property, within the meaning of those words as they are used in section 6010.65 of the Revenue and Taxation Code, if the person has paid all applicable taxes with respect to the acquisition of the property, notwithstanding the fact that the sale and purchase of the property may have been subject to the partial exemption from tax provided by this regulation.~~

~~(3) Subsequent Lease of Property Acquired Subject to Partial Exemption. If a person has acquired property subject to the partial exemption provided by this regulation and has paid all applicable taxes at that acquisition, the property will be regarded as property as to which sales tax reimbursement or use tax has been paid, and the subsequent lease of that property will not be subject to tax measured by rental receipts.~~

~~(j) Operative Date. Except as expressly set forth otherwise in subdivisions (c)(6)(A)6. and (e) of this regulation, this regulation is operative as of January 1, 1994. All provisions of this regulation cease to be operative as of January 1, 2004, as provided by Revenue and Taxation Code section 6377(g). Retailers and qualified persons may not accept or claim any Section 6377 Manufacturer's Exemption Certificates for a sale or a use made after December 31, 2003.~~

~~Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6377, Revenue and Taxation Code.~~

~~Appendix A~~

~~SECTION 6377 MANUFACTURER'S EXEMPTION CERTIFICATE~~ ~~STATE OF CALIFORNIA~~
~~BOARD OF EQUALIZATION~~

~~PLEASE NOTE~~

~~This exemption being declared applies only to the state use tax which is at the rate of 5% effective January 1, 2002, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1995 to December 31, 2000, and is specific to this transaction only and may not be construed to exempt other transactions. As the purchaser, you remain liable for the applicable local and district taxes. To claim the exemption, this declaration must accompany a timely filed sales and use tax return for the period of purchase. Void after expiration date. Retailers and qualified persons may not accept or claim any Section 6377 Manufacturer's Exemption Certificates for a sale or a use made after December 31, 2003.~~ **~~Questions regarding this certificate should be directed to: [insert contact information]~~**

~~Certificate No:~~

~~Valid Period Begins:~~

~~Valid Period Expires:~~

~~(*See below for leases)~~

~~I hereby certify that the tangible personal property described below and purchased or leased from: (enter seller's/lessor's name and address)~~

~~SELLER'S NAME~~

~~SELLER'S ADDRESS (Street, City, State, Zip Code)~~

~~and will be used by me primarily (please check one)~~

- ☐ ~~1. for manufacturing, processing, refining, fabricating, or recycling, or~~
- ☐ ~~2. for research and development activities as described in Internal Revenue Code Section 174, or~~
- ☐ ~~3. to maintain, repair, measure, or test any property being used for (1) or (2) above, at my facility located at (enter facility's address):~~

~~(Street, City, State, Zip Code)~~

~~SALES INVOICE NUMBER~~	~~SALES INVOICE DATE~~	~~DESCRIPTION OF QUALIFIED PROPERTY PURCHASED OR LEASED*~~	~~SALES PRICE/ RENTALS PAYABLE~~

~~I understand that if such property is, within one year from the date of purchase or lease, removed from California or converted for use or otherwise used in a manner not qualifying for the partial exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. Taxable rentals payable from the lease of certain tangible personal property to a qualified person are subject to the partial exemption for a period of six years from the date of inception of the lease. The lease must commence during the time in which this Certificate is valid. *Attach a copy of the lease agreement.~~

~~PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE~~	~~TITLE~~	
~~SIGNATURE~~	~~DATE~~	~~PERMIT NUMBER~~

~~**NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION~~

~~The following business has been registered as a "qualified person" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the exemption provided in Section 6377 of the Revenue and Taxation Code.~~

~~BUSINESS NAME~~	~~SIC CODE~~
~~BUSINESS ADDRESS (Street, City, State, Zip Code)~~	~~PERMIT NUMBER~~

~~**AUTHORIZED BY: (Must be signed by two Board representatives)~~

~~REVIEWED BY~~	~~DATE~~
~~APPROVED BY~~	~~DATE~~

~~** WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE~~

~~Appendix B~~

~~SECTION 6377 MANUFACTURER'S USE TAX DECLARATION~~ ~~STATE OF CALIFORNIA~~

~~BOARD OF EQUALIZATION~~

~~*PLEASE NOTE*~~

~~This is a partial exemption from sales and use taxes at the rate of 5% effective January 1, 2002, 4.75% from January 1, 2001 to December 31, 2001, and 5% from January 1, 1995 to December 31, 2000. You are not relieved from your obligations for the local and district taxes on this transaction. The exemption is specific to this transaction only and may not be construed to exempt other transactions. Generally, the partial exemption will not be allowed unless this certificate is issued within 60 days after the date of purchase and the retailer claims the exemption on a timely filed return. Void after expiration date. Retailers and qualified persons may not accept or claim any Section 6377 Manufacturer's Exemption Certificates for sales made after December 31, 2003.~~ **Questions regarding this certificate should be directed to: [insert contact information]**

~~Certificate No:~~
~~Valid Period Begins:~~
~~Valid Period Expires:~~
~~(*See below for leases)~~

~~I hereby certify that the tangible personal property described below that is subject to use tax was purchased or is being leased from: (enter seller's/lessor's name and address)~~

~~SELLER'S NAME~~

~~SELLER'S ADDRESS (Street, City, State, Zip Code)~~

~~and will be used by me primarily (please check one)~~

- ☐ ~~1. for manufacturing, processing, refining, fabricating, or recycling, or~~
- ☐ ~~2. for research and development activities as described in Internal Revenue Code Section 174, or~~
- ☐ ~~3. to maintain, repair, measure, or test any property being used for (1) or (2) above, at my facility located at (enter facility's address):~~

~~(Street, City, State, Zip Code~~

~~SALES INVOICE NUMBER~~	~~SALES INVOICE DATE~~	~~DESCRIPTION OF PROPERTY PURCHASED OR LEASED*~~	~~SALES PRICE/ RENTALS PAYABLE~~

~~I understand that if such property is, within one year from the date of purchase or lease, removed from California or converted for use or otherwise used in a manner not qualifying for the partial exemption that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. Taxable rentals payable from the lease of certain tangible personal property to a qualified person are subject to the partial exemption for a period of six years from the date of inception of the lease. The lease must commence during the time in which this Certificate is valid. *Attach a copy of the lease agreement.~~

~~PRINT NAME OF PURCHASER OR PURCHASER'S AUTHORIZED REPRESENTATIVE~~	~~TITLE~~	
~~SIGNATURE~~	~~DATE~~	~~PERMIT NUMBER~~

~~** NOT VALID UNLESS COMPLETED BY THE CALIFORNIA STATE BOARD OF EQUALIZATION~~

~~The following business has been registered as a "qualified person" who has certified that this purchase/lease of tangible personal property will be used in a manner entitling them to the exemption provided in Section 6377 of the Revenue and Taxation Code.~~

~~BUSINESS NAME~~	~~SIC CODE~~
~~BUSINESS ADDRESS (Street, City, State, Zip Code)~~	~~PERMIT NUMBER~~

~~**AUTHORIZED BY: (Must be signed by two Board representatives)~~

~~REVIEWED BY~~	~~DATE~~
~~APPROVED BY~~	~~DATE~~

~~** WHEN COMPLETED AND SIGNED, THIS FORM MAY BE REPRODUCED FOR USE BY THE QUALIFIED PERSON LISTED ABOVE~~

~~Regulation 1525.3. Manufacturing Equipment - Leases of Tangible Personal Property.~~

~~(a) General Application to Leases. Leases of tangible personal property which are classified as "continuing sales" and "continuing purchases" of tangible personal property, in accordance with Regulation 1660, "Leases of Tangible Personal Property -In General," may qualify for the partial exemption from tax for manufacturing equipment, under the conditions set forth in paragraph (i)(1) of Regulation 1525.2, "Manufacturing Equipment." Lease transactions which qualify for the partial exemption are taxed at the rate specified in Regulation 1525.2, paragraph (a).~~

~~(b) Recharacterization. With respect to transactions which the parties denominate as a "lease," but which are recharacterized for sales and use tax purposes either as sales at their inception, pursuant to Regulation 1641, "Credit Sales and Repossessions," paragraph (b), or as sales under a security agreement, Regulation 1660, "Leases of Tangible Personal Property -In General," paragraph (a)(2), the transactions may qualify for the partial exemption, in accordance with Regulation 1525.2.~~

~~(c) Continuation of Partial Exemption. Where possession of tangible personal property is transferred to a qualified person as defined in paragraphs (c) and (d) of Regulation 1525.2 and pursuant to a lease agreement classified as a continuing sale and continuing purchase, lease receipts shall remain partially exempt for a period of six years from the date of the inception of the lease whether or not the lessee remains as a qualified person throughout the six year period. At the close of the six year period from the date of the inception of the lease, lease receipts are subject to tax without exemption.~~

~~(d) Leases of Tax-Paid Property. The partial exemption is not available to lessors who lease to qualified persons or to vendors to such lessors when the lessor elects to pay sales tax reimbursement at the time of acquisition of the property or pays use tax measured by the purchase price of the property.~~

~~(e) Manufacturers Who Lease Qualified Property. A lease of tangible personal property by the manufacturer of that property is ordinarily regarded as a "continuing sale" and "continuing purchase" in accordance with Regulation 1660, "Leases of Tangible Personal Property - In General." Nevertheless, beginning January 1, 1997, a lessor of tangible personal property described in sections 17053.49 or 23649 of the Revenue and Taxation Code, who is the manufacturer of that property and who leases that property to a qualified person, as defined in section 17053.49 or 23649 of the Revenue and Taxation Code, in a form that is not substantially the same form as acquired, may, in lieu of reporting tax measured by the rentals payable, elect to pay tax measured by the cost price of that property where the election is made on or before the due date of the return for the period in which the property is first leased to the qualified person. The election shall be made by reporting use tax measured by the cost price of that property on the return for that period. The election shall not be revoked with respect to the property as to which it is made. The lease of that property for which an election is made to report and pay tax on the cost price of that property shall thereafter be excluded from the classification of a "continuing sale" and "continuing purchase."~~

~~For purposes of this subdivision, "cost price" means the price at which similar property has been previously sold or offered for sale. If that property has not been previously sold or offered for sale, then the cost price shall be deemed to be the aggregate of the following:~~

~~(1) Cost of materials.~~

~~(2) Direct labor.~~

~~(3) The pro rata share of all overhead costs attributable to the manufacturer of the property.~~

~~(4) Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the factors listed in subsections (1) to (3), inclusive.~~

~~(f) Operative Date. All provisions of this regulation cease to be operative as of January 1, 2004, as provided by Revenue and Taxation Code section 6377(g). Retailers and qualified persons may not accept or claim any Section 6377 Manufacturer's Exemption Certificates for a sale or use made after December 31, 2003.~~

~~Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6244.5 and 6377, Revenue and Taxation Code.~~